

DELPHI

Joseph E. Papelian
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May 5, 2011

Jessica L. Lefort, Esq.
National Criminal Enforcement Section
Antitrust Division
U.S. Department of Justice
450 5th Street, N.W. - Suite 11300
Washington, D.C. 20530

Re: Grand Jury Subpoena No. 10-1-067
Delphi File No. 2010-000292

Dear Ms. Lefort:

David Sherbin and I appreciate meeting with you and Kevin Wang yesterday about Delphi's status and our document production in response to a Grand Jury Subpoena ("Subpoena") served on Delphi on May 11, 2010. This letter is a follow-up to our meeting.

Immediately after being served with the Subpoena, I took steps to place a hold on documents that might be responsive to the Subpoena and to preserve electronic data. In my initial call with Mr. Schmoll on May 14, 2010, he said Delphi was not a "target" of the investigation, but was a "subject." We also discussed limitations to the Subpoena that were memorialized in my May 17, 2010 letter to Mr. Schmoll and subsequent written communications. The next day, I issued a Document Search Memo for the collection of documents responsive to the Subpoena.

But even with the limitations, the scope of documents to be collected was very broad. It was necessary we retain contract attorneys to assist in our review of the many thousands of documents collected. To date we have spent about \$500K in creating and maintaining a copy of the Company's backup tape of May 2010 (when Delphi was served with the Subpoena) and for the initial review conducted by contract attorneys. We have made four productions to the Department of Justice with the most recent included with my cover letter of March 18, 2011.

As a courtesy, I routinely sent an email to Mr. Schmoll with a copy of my production letters. I did so on March 18, 2011, but my email was returned as undelivered. I promptly called Mr. Schmoll's number, but got a recording that his number was disconnected. On March 21,

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2011, I spoke with Kathryn Hellings of your office. I explained I had sent Delphi's fourth production to Mr. Schmoll with my letter of March 18, 2011, and she told me Mr. Schmoll had retired in December 2010. Later, on March 21, 2011, we spoke and you told me that you had taken over the investigation as it related to Delphi.

In my discussions with Mr. Schmoll, I told him I doubted Delphi was involved in any illicit price-fixing arrangement, in part because of the limited success Delphi has achieved in obtaining business with Japanese companies notwithstanding our belief that our products were competitive in price and quality. In addition, we have reviewed thousands of documents collected in response to the Subpoena and discovered no document that suggested Delphi was involved in a price-fixing scheme.

In April 2011, after you assumed responsibility for this matter, you agreed to meet with us to discuss Delphi's status and our document production. That meeting occurred yesterday.

In addition to reviewing the information noted above, I summarized a meeting I had with two Delphi employees of our electrical wiring business on March 5, 2010 - two months before Delphi was served with the Subpoena. They contacted me seeking legal advice on how to approach Toyota in addressing what they believed were unfair trade practices by Yazaki, Sumitomo and Furukawa in limiting Delphi's access to bid on Toyota wiring business. They provided me a document titled *Unfair trade practices by Yazaki, Sumitomo and Furukawa*. On March 24, 2010 I sent a follow-up email to one of the Delphi employees with whom I had met asking if he needed my assistance in preparing a draft letter to Toyota, as we had discussed at our meeting on March 5, 2010. On March 31, 2010 I had a file opened on our Legal Staff database. At our meeting yesterday, I provided you with a copy of the printout from our database showing a file was created on March 31, 2010, a copy of the document I received from the two Delphi employees on March 5, 2010, and my follow-up email of March 24, 2010 to one of the Delphi employees with whom I had met on March 5, 2010. These documents were Bates numbered DEL-0055401 – DEL-0055405; another copy is enclosed.

In addition, I provided you with a copy of documents we received in response to the Subpoena from one of the Delphi employees with whom I met on March 5, 2010. These documents were Bates numbers DEL-0055406 – DEL-0055408. The handwritten notes on the bottom of document Bates numbered DEL-0055407 were made by the Delphi employee during our meeting of March 5, 2010; the "privileged" notations at top of the document were made by this employee recently when he produced this document in response to the Subpoena. Another copy of these documents is enclosed.

At our meeting yesterday you directed that Delphi suspend its document production, but the Subpoena would remain in effect. You also noted that so far you had not found any incriminating documents relating to Delphi. In light of our findings, and the results of your review so far, we asked you revise Delphi's designation from a "subject" to a witness.

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In our telephone conversation today, you reaffirmed your direction we should suspend our document production, but the Subpoena would remain in force and that we should maintain the documents we have collected. You explained the Anti-Trust Division has a policy not to change a company's designation while an investigation remains active, and thus Delphi's status as a 'subject' would continue notwithstanding the evidence so far showing no complicity by Delphi in a price-fixing scheme and our cooperation.

I will remain your point of contact for Delphi. Thank you again for meeting with us and for your professionalism.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'J. E. Papelian', is written over the typed name.

Joseph E. Papelian

Enclosures

c: David M. Sherbin

Pending Legal Matter

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Pending Legal Matter

Matter Information Section

File Number: 2010-000129
 File Name: Unfair Competition - Yazaki, Sumitomo & Furukawa
 Case Caption:
 Section: Litigation
 Matter Type: Advice
 Sub Matter:
 Status: Open Country: Mexico
 Division: Delphi E/EA 2nd Division:
 FAA Lotus Notes#: VDSR #:
 CISCO/Plant:
 Eng. Location:
 Counter Party:
 Co-Party:
 Short Desc:
 Atty/Paralegal: Joseph E. Papelian
 Reader Choice: Litigation Group
 Merged Case?: Non-Legal?: NO New Suit Letter?:
 Merged File Information:

Comment Section

4th Comments
 (Continued):
 More Comments
 (Continued):
 Comments
 (Continued):
 Comments: 03/31/10 - JEP requested physical file created. (AMH)

Summary Section

Date Opened: 03-31-2010 Date Closed:
 Review Date: Retention Date:
 Due Date: Release Date:
 Reserve Date: Reserve Amount:
 Damages For: Damages Against:
 Insured?: N/A Sedgwick N.I.S.M.: N/A
 CFO Report?: NO Monthly Report?: YES
 Sub Category:
 Case Status:
 Case Summary:
 Quarter Review:

Court Section

Court Name: Trial Date:

<http://uskoka95.delcoelect.com/Apps/USAPP/usapp334.nsf/defaultview/886CD23830BEEEA7852576F7...> 3/31/2010

DEL-0055401

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County:		State/Province:	
Country:		Judge:	
Stage of Case:		Docket/Case #:	
Classifications:			
Breakdown:			
Disposition:			
Disp Date:	Disp Amount:	Delphi Share:	
Indemnification: NO	by Whom:		

Miscellaneous Section

Occurrence:		Occurrence Date:	
Occurrence City:			
Occurrence State:	Occur. Country:		
Allegation:			
Ins. Office:			
Ins. Contact:	Ins. Phone:		
Recovery Report?: NO			
Recovery Schedule:			
Recovery Total:	To be Collected:	Collected to Date:	
Write Off:	Write Off Date:	Write Off Amount:	
Recovery Notes:			
Payment Date:	Check Number:	Check Amount:	
Payment Comment			
IP Tech Class:			
Patent Details:			
Trade Names:			

Government Contract Section

Solicitation #:	Contract #:	Contract Status:
Contract Type:		
Agency:		
Sub Agency:		
Intermediary:		
Sub Contractor:		
PI / Engineer:		
Contract		
Comments:		
Proposal Date:	Expected Award Date:	
Expected Performance Start Date:	Expected Performance End Date:	
Selected/Rejected Date:	Contract Award Date:	
Performance Start Date:	Performance End Date:	
Proposed Gov\$:	Prop Delphi\$:	Total Proposed:
Actual Gov\$:	Actual Delphi\$:	Total Actual:
Funds Allotted:	Date Funds Allotted:	

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Modification #

Mod Date:

Mod Amount:

Mod Comments:

Contact Section

Delphi Counsel:

Delphi Counsel:

Other Counsel:

Party:

Other Counsel:

Party:

Other Counsel:

Party:

Parties:

Contacts:

Douglas R. Gruber, Managing Director DEEDS NA
(248) 813-3777
douglas.r.gruber@delphi.com
Hidenari Nakamura, Business Director (Packard)
(734) 904-7666
Hidenari.Nakamura@delphi.com

Off-Site Storage:

Attachment1

Comments:

Attachment2

Comments:

Attached File

Information:

Physical File

Location:

4.

UNFAIR COMPETITION

"Unfair trade practices by Yazaki, Sumitomo and Furukawa"

↓ New business competition fairness

- Three parties hold over 90% of Toyota's business
- Three parties might make mapping Toyota business global as a group against Delphi
- The sourcing price information sharing might exist between three parties
- Delphi has limited business opportunities at outside of NA, and therefore they could take too aggressive price to attack Delphi, and recover the loss from other programs where Delphi does not involve.
- Three parties might desire to restore order – less competition- and remove Delphi from the supply base
- TMC engineering would agree with restored order since dealing with fewer suppliers is easier for them – Delphi experiences it through next generation Corolla sourcing. TMC Engineering General Manager has mentioned TEMA and Delphi Sales that no major business would come to Delphi due to use of Japanese supplier for major products.

W get LETTER Agreement

↓ DCS penetration roadblock

- Delphi experiences hard time to join DCS component development at TMC Engineering
- Intellectual Property sharing is more prevalent between TMC and Japan suppliers include above three parties
- Packard is aware that core development is key for Toyota participating DCS component development however no chance were given by TMC Engineering last 30 years
- Packard might block from making components for W/H for Toyota because of not only issue of intellectual property but also under unfair trading by three key suppliers
- For instance, Sumitomo licensed only Yazaki and Tokai Rika to make 064 terminals

↓ Toyota designated component price control

- Toyota's component set price (Toyota Standard Price) exists in Japan region only not overseas regions
- Japanese suppliers are given an authority by Toyota to sell TSP component to third party (such as including Delphi) with handling & profit mark up
- TSP is not accessible to Delphi for quoting on new business

↓ Other issues

- TMC engineering retirees & family members work at three suppliers. For instance, one Engineering manager moved to Sumitomo two years ago who has no degree of any specialty however he was hired by Sumitomo with position Engineering Director.
- DP is #1 of the market share in NA, EU, SA and China yet has less than 5% of Toyota's worldwide business

- NUG CRUBER

- HIDENARI NAKAMURA

W any public information?

03/05/16

DEL-0055404

Papelian, Joseph E

From: Papelian, Joseph E
Sent: Wednesday, March 24, 2010 3:40 PM
To: Gruber, Douglas R
Subject: Unfair Trade Practices

Doug:

I write as a follow-up to our meeting on March 5, 2010 also attended by Hidenari Nakamura. We discussed preparing a draft letter to show to Toyota. Is this still an option? Do you need my assistance? Please let me know.

Thanks,

Joe

“Unfair trade practices by Yazaki, Sumitomo and Furukawa”

- ✦ New business competition fairness
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*Privileged & Confidential
Attorney Work Product
Douglas R. Gruber*

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*Legal letter - how to use. Get part across. Good guy/bad guys.
 - couch it w/ no accusations. - News clippings
 - really serious - Uncomfortable feeling -
 - Harsh but not sad. - Rattle letter*

- Unfair practices by YAZ, SEWS, FEC regarding Toyota business.
- YAZ, SEWS, FEC compete as a group against DP- information sharing exists.
- YAZ, SEWS, FEC desire to restore order – less competition- and remove DP from the supply base.
- TMC engineering would agree with restored order since dealing with fewer suppliers is easier for them.
- TMC engineering retirees & family members work at YAZ, SEWS.
- YAZ, SEWS, FEC have over 90% of Toyota's business.
- DP is #1 of the market share in NA, EU, SA and China yet has less than 5% of Toyota's worldwide business.
- DP business is on the path to shrink by 30%.
- Intellectual Property sharing is more prevalent between TMC and YAZ, SEWS, FEC.
- Toyota's component set pricing (TSP) is set by TMC based on YAZ and SEWS prices.
- TSP is not accessible to DP for quoting on new business.
- DP is blocked from making components for W/H for Toyota.